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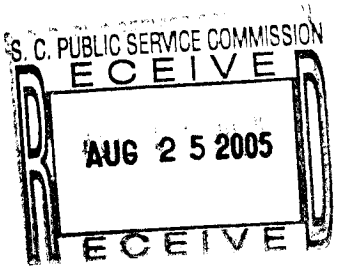

August 23, 2005

The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Joint Petition for Arbitration of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended
Docket No. 2005-57-C, Our File No. 803-10208

Dear Mr. Terreni:

This letter responds to "BellSouth's Objection to Joint Petitioner's Request," filed on August 10, 2005 ("BellSouth's Objection"), as well as to the letters filed on August 11, 2005 by Kenneth L. Millwood and Hamilton E. Russell ("Millwood Letter" and "Russell Letter", collectively, the "Nelson Mullins Letters"). In this response, counsel for the Joint Petitioners requests that the hearing officer overrule BellSouth's objection (based on the fact that no conflict existed under the Rules of Professional Conduct), and restore all of Mr. Russell's pre-filed (as completed) and hearing testimony to the record.

BellSouth raises no sustainable objection. Instead, BellSouth makes the false assertion that Mr. Russell "has a conflict of interest that prevents him from advocating legal and policy positions against BellSouth's interest, without BellSouth's consent." BellSouth's Objection, at 2. First, Joint Petitioners already have clearly demonstrated that Mr. Russell had no conflict of interest when his testimony was delivered. Mr. Russell appeared as a fact and policy witness, not as an advocate. NuVox engaged Ellis Lawhorne and Kelley Drye attorneys to appear as advocates for the company. The fact that Mr. Russell did not appear as an advocate bars any finding of a conflict of interest. Moreover, Mr. Russell's completed testimony makes it plain that he has never personally represented BellSouth in any matter and has never been privy to any BellSouth information by virtue of his employment at Nelson Mullins.

In addition to resting on the false premise that Mr. Russell appeared as an advocate, BellSouth's Objection also relies on the false pretense that Mr. Russell needed the consent of "his client, BellSouth," BellSouth's Opposition at 2 and n.3, prior to

delivering the same testimony that he delivered in seven states without objection prior to delivering it in South Carolina.[1] No such consent was required because Mr. Russell represented neither NuVox nor BellSouth in this Docket. Moreover, Nelson Mullins is a law firm that represents **both** NuVox and BellSouth in various and separate matters, but represents neither BellSouth nor NuVox in this matter. No Nelson Mullins attorney has appeared as counsel for or represented any party in this docket.

BellSouth also relies on the false assertion that Mr. Russell is a "disqualified witness." BellSouth's Opposition at 3. The July 20, 2005 Order entered by the Hearing Officer makes no such finding of disqualification. The Order found, simply, that Mr. Russell's testimony as presented was "incomplete." Order at 4. Indeed, the Order instructs the Joint Petitioners to replace the stricken testimony with testimony **"by witnesses of their choice (including Russell, if they so desire)."** Order at 5 (emphasis added). Consistent with the Order, Joint Petitioners chose Mr. Russell again as their witness. BellSouth's assertion that Mr. Russell is a disqualified witness is not sustainable and cannot serve as the basis for a sustainable objection.

Thus, BellSouth has not raised a valid or sustainable objection to Joint Petitioners' request to restore Mr. Russell's supplemented testimony in its entirety. No conflict existed; Mr. Russell did not appear as an advocate for either BellSouth or NuVox and Mr. Russell had not been made privy to any BellSouth information by virtue of his association with Nelson Mullins. Mr. Russell's new employer, Nelson Mullins, represents both NuVox and BellSouth in separate and various matters, but not in this one. And, finally, Mr. Russell is not a disqualified witness (nor are there any valid grounds for disqualifying him or for further sullying his reputation by entertaining what amounts to nothing more than a baseless personal attack by BellSouth).

The filing of the Nelson Mullins Letters does nothing to change this analysis. In Mr. Millwood's letter, he refers to an "agreement with the parties" regarding the filing of testimony by Mr. Russell in this matter and he concludes that he made an "error" in consenting to the August 4, 2005 filing of Mr. Russell's testimony. With due respect to Mr. Millwood, no such agreement exists. A pronouncement of a Nelson Mullins policy favoring the interests of one client (BellSouth) over those of another (NuVox) does not constitute an agreement between NuVox and Nelson Mullins.[2] Moreover, a self-claimed error by Nelson Mullins in implementing its own policy[3] is not a factor that should be

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[1] Mr. Russell did not appear as a witness for NuVox in the Mississippi hearing (the ninth in a series of arbitration hearings). NuVox's choice of witness in Mississippi was not based on the "conflict of interest" asserted by BellSouth.

[2] This pronouncement is contained in the form of a July 8, 2005 letter from Mr. Millwood to Mr. Turner at BellSouth and Riley Murphy, NuVox's General Counsel. No counsel for Xspedius was copied on the letter. A copy of Mr. Millwood's July 8, 2005 letter is attached hereto. Notably, the letter makes clear that Nelson Mullins serves as counsel to **both** NuVox and BellSouth in "other, unrelated matters" and that it "represents neither" in this matter, and that it "has no role in any proceeding in which NuVox and BellSouth are both parties."

[3] Nelson Mullins appears to believe that, in order to keep BellSouth's high profile name on its client list, Mr. Russell would have to give his testimony via "subpoena and deposition" rather than voluntarily or

considered in this docket or with respect to the resolution of BellSouth's objection to the re-filed and completed testimony of Mr. Russell. Nelson Mullins has no role in this matter. Nelson Mullins' client relation problems – with both BellSouth and NuVox– are clearly other matters that should be sorted out elsewhere, as such problems do not appear to fall within the jurisdiction of the Public Service Commission.

In the Russell Letter, Mr. Russell requests that "all testimony attached to or referenced in Mr. Pringle's August 4, 2005 letter be withdrawn." With due respect to Mr. Russell, he has no right or authorization to request the withdrawal of testimony (even his own), as he is not a party in this proceeding and as neither he nor Nelson Mullins are counsel to NuVox or Xspedius in this proceeding.[4] No party other than the Joint Petitioners has the authority to withdraw Mr. Russell's testimony. The Joint Petitioners have no intention of withdrawing this testimony which Mr. Russell willingly provided not once, but twice, with Nelson Mullins' consent. Mr. Russell's "decision" to request that his testimony be withdrawn does not empower him to make such a request on behalf of the Joint Petitioners and there is no legally sustainable basis upon which to grant the request. In any event, Joint Petitioners were not asked to consent to Mr. Russell's request and they will not provide such consent. Under any appropriate analysis, the Hearing Officer must ignore or deny Mr. Russell's "request."

And so, we are now at point where the supplemented testimony has been filed, BellSouth has filed its objection to the Joint Petitioners' request to restore all of Mr. Russell's now complete testimony, and the Joint Petitioners have responded to that objection. The conflict of interest issue raised by BellSouth and objected to by the Joint Petitioners on grounds that the conflict does not exist is squarely before the Hearing Officer. The Hearing Officer must decide whether a conflict exists, and if so, whether an objection based on the conflict is sustainable and whether striking all of the testimony provided by Mr. Russell (including hearing testimony provided on behalf of Xspedius, as well as NuVox) is in the interests of justice.

Based on the forgoing, and on arguments presented previously by the Joint Petitioners, no conflict or sustainable objection exists. In any event, there is no basis upon which striking the testimony of Mr. Russell would serve the interests of justice. Only an objection to the substance of testimony presented would support striking that testimony; no authority to the contrary has been presented or argued to the Hearing Officer. BellSouth's objection has nothing to do with the substance of what Mr. Russell said in his testimony (which he had given without objection in seven previous states and

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at a hearing before the Commission. Clearly, Nelson Mullins does not have the ability to demand that the Commission hear testimony (the content of which would not change in any respect) only by reading transcripts from depositions conducted pursuant to a subpoena. Just as BellSouth is unable to object to the substance of Mr. Russell's testimony, Nelson Mullins also takes no issue with the substance of the testimony.

[4] It is important to remember that although Mr. Russell's pre-filed testimony was on behalf of NuVox (Mr. Falvey sponsored the same pre-filed rebuttal testimony for Xspedius), his hearing testimony was on behalf of both Xspedius and NuVox.

which he has not disavowed in any state, including this one). After all, Mr. Falvey, an attorney himself, sponsored exactly the same pre-filed rebuttal testimony without objection from BellSouth.[5] The idea that there is a valid objection to the testimony itself is false—the only objection is to the person giving it. Therefore, there is no cognizable argument that the "danger of unfair prejudice" should keep the Commission from hearing that testimony. Similarly, if the discussion of legal issues is objectionable, it should have been objected to at the hearing (it wasn't).

Indeed, the substance of Mr. Russell's rebuttal testimony has already been subject to cross-examination by BellSouth. And, BellSouth's recent objections do not question or dispute even one fact submitted in Mr. Russell's August 4th supplement. Thus, BellSouth has not made any objection based on the substance of the testimony filed.

The arguments the Joint Petitioners made previously in response to the Motion to Strike demonstrate clearly why Mr. Russell did not violate the Rules of Professional Conduct. As set out in Mr. Russell's completed testimony, Mr. Russell has *never* been privy to any BellSouth information in connection with his Nelson Mullins employment. Thus, BellSouth's citation to cases or authorities involving confidential information and the duties owed in connection therewith are completely inapposite. BellSouth has still been unable to cite to any case or authority where an attorney who appears solely as a witness in a case where no confidences are at issue (the situation in this Docket) has been adjudged to have "represented" or "advocated" in that proceeding. This is a critically important point: the only "connection" to BellSouth Mr. Russell has is that he does securities work for a law firm that (in addition to representing NuVox) also represents BellSouth in certain matters unrelated to what Mr. Russell does. As was made clear at the hearing, Mr. Russell testified on behalf of NuVox (and Xspedius), and nothing about his relationship with Nelson Mullins compromised, changed, affected, or called into question a single word of that testimony.

Additionally, BellSouth has not cited to a single authority for the proposition that the discussion of legal issues on the witness stand by an attorney constitutes "representation" or "advocacy." As set forth above, if Mr. Russell and Mr. Falvey offered testimony on "legal issues," they did so without objection by BellSouth at the hearing (and in, Mr. Russell's case, at seven others). Nor has BellSouth demonstrated (or alleged) the "unfair prejudice" necessary to strike Mr. Russell's testimony. The proposition that BellSouth would not be in as good a position if the testimony were not stricken does not constitute "unfair prejudice." "Unfair prejudice" in the context of hearing testimony means that it would be improper for the Commission to base any of its decisions in this Docket on that testimony. There is no such "unfair prejudice" here. Indeed, the only "unfair prejudice" at issue here, is that which will result if Mr. Russell's complete testimony is not restored and BellSouth is successful in its campaign to remove

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[5] BellSouth's campaign to strike Mr. Russell's testimony appears in large measure to be an unfounded and unorthodox attempt to erase from the record its unsuccessful cross examination of Mr. Russell at the hearing.

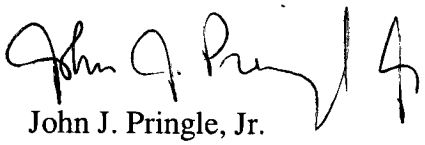
Joint Petitioners' hearing testimony from the record upon which this Commission must base its arbitration decision.

This saga demonstrates exactly why the South Carolina Supreme Court has deemed it inappropriate to use the Rules of Professional Conduct as a procedural weapon. If BellSouth had a problem with "its lawyer" or "its law firm," it should have sought a determination from the Disciplinary Committee, where the issue could be addressed dispassionately, and appropriate relief could be granted, if at all warranted. Instead, these (false) allegations of ethical misconduct have been raised in an inappropriate manner that has created an atmosphere where undue influence and pressures wholly unconnected to the material and relevant issues before the Commission in this Docket have been brought to bear.

Joint Petitioners are on absolutely solid ground legally and ethically in this matter. There are no grounds upon which Joint Petitioners should be forced to select a witness other than the one they chose (twice) to present testimony. And there are no grounds to strike any of the pre-filed or hearing testimony presented by Mr. Russell on behalf of the Joint Petitioners. Accordingly, Joint Petitioners respectfully request that the Hearing Officer end this BellSouth-created controversy by over-ruling BellSouth's objection for lack of foundation, by denying BellSouth's request to strike Mr. Russell's testimony, by admitting into the record the complete rebuttal testimony of Mr. Russell, by restoring all of Mr. Russell's hearing testimony, and by granting such other relief as is just and proper. This is the only way that the Commission can have before it the record upon which it needs to decide the issues in this arbitration.

With kind regards, I am

Yours truly,



John J. Pringle, Jr.

JJP
cc: All parties of record
Ken Millwood, Esquire
Bo Russell, Esquire

Exhibit 1

Nelson
Mullins

Nelson Mullins Riley & Scarborough LLP
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July 8, 2005

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Executive Vice President and General Counsel
NuVox Communications, Inc.
2 North Main Street
Greenville, SC 29601

Patrick W. Turner, Esq.
General Counsel, SC
BellSouth Corporation
1600 Williams Street, Suite 5200
Columbia, SC 29201

RE: Various matters in dispute between NuVox Communications, Inc. ("NuVox") and BellSouth Corporation ("BellSouth")

Dear Ms. Murphy and Mr. Turner:

Over the last several weeks, we have had discussions with each of you regarding our relationship to both NuVox and BellSouth and, in particular, those issues that attach to our recent hiring of Bo Russell, formerly Vice President of Legal Affairs for NuVox, now Of Counsel with our Firm in our Greenville office. The present issue arises out of continuing, various disputes between NuVox and BellSouth wherein Mr. Russell, because of his former association with NuVox, may be called upon to be a witness for NuVox. Although this Firm does not serve as counsel to either NuVox or BellSouth in any of the disputes in question, we are counsel to each in other, unrelated matters.

In summary, BellSouth feels that Mr. Russell's appearance in those various proceedings as a witness, perhaps perceived as an advocate given the nature of the proceedings, creates a conflict under the Rules of Professional Conduct which govern the conduct of Mr. Russell and the Firm because of the Firm's representation of BellSouth in various, unrelated matters. NuVox, on the other hand, believes that it should have the right to use Mr. Russell as a witness given his former association with it in various important capacities, that this Firm as its counsel in other unrelated matters cannot impede its ability to present its case in the various issues related to BellSouth and, as we understand it, disagrees with BellSouth's underlying

analysis regarding any conflict of interest that may attach to Mr. Russell's appearance as a witness in these various proceedings.

Senior management of this Firm has spent a great deal of time analyzing this issue because of its commitment to both the highest ethical standards and the interests of all its clients, including both BellSouth and NuVox. That analysis leads us to various, difficult conclusions. First, because of the competing interests of NuVox and BellSouth, in which we represent neither, we have concluded that it is inappropriate for us to take a position on the underlying issue of whether a conflict of interest exists in the first instance. Second, we have concluded that because we have no role in any proceeding in which NuVox and BellSouth are both parties, and have no other available forum to us, we have no readily available avenue to pursue or cause a resolution of the issue of whether a conflict of interest exists. Third, we believe we are required to respond to the interests of BellSouth and that we not violate any obligation to it by pursuing what it perceives to be a conflict of interest, specifically, having Mr. Russell voluntarily testify in any proceeding on behalf of NuVox adverse to BellSouth. Fourth, we are cognizant of our responsibility not to directly or inadvertently cause any harm to NuVox's ability to forthrightly and fairly present its case on any issue that may exist between it and BellSouth.

With all these interests in mind, we feel the only way to proceed in this matter is as follows. Any party to any proceeding who perceives the need to have Mr. Russell's testimony presented in any proceeding in which NuVox and BellSouth have adverse or competing interests, must obtain that testimony by subpoena and deposition. This letter will serve as a standing commitment for the undersigned to accept service of any subpoena on behalf of Mr. Russell, to arrange his testimony as and when necessary consistent with the various schedules of the parties involved, and to appear as counsel for Mr. Russell in any such deposition if we determine that would be appropriate.

If either of you have any questions regarding our position on this matter, please contact the undersigned.

With kindest regards, I remain

Very truly yours,

Kenneth L. Millwood

KLM:dm
cc: Executive Committee
Mr. Bo Russell